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Eric Schaaf, Esq.
Regional Counsel
United States Environmental Protection Agency
Region II
290 Broadway
New York, New York 10007-1866

Re: Passaic River Allocation of Responsibility/*De Minimis* Settlements

Dear Mr. Schaaf:

The ten undersigned entities (the Undersigned Entities) – all of whom are parties to the Administrative Settlement and Order on Consent for Remedial Investigation/Feasibility Study; Lower Passaic River Study Area (LPRSA) portion of the Diamond Alkali Superfund Site and recipients of General Notice Letters from the United States Environmental Protection Agency (EPA) concerning the LPRSA – hereby petition EPA for *de minimis* status under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. § 9622(g)(a). For the reasons set forth below, the Undersigned Entities meet EPA's criteria for a *de minimis* settlement, and believe that the time is ripe for EPA to begin discussions to foster such a settlement.

We view this process as complementary to the Lower Passaic River Cooperating Parties Group's (CPG) ongoing discussions with EPA in connection with the CPG's preparation of the RI/FS for the LPRSA. The successful remediation of the LPRSA will require careful consideration of both the appropriate remedy as well as the relative contributions thereto of all PRPs, including *de minimis* parties.

As reflected in the attached submissions that set forth specific information regarding the alleged connection of each of the Undersigned Entities to the LPRSA, there is no credible evidence that any of the Undersigned Entities are responsible for any release of dioxins, furans, or polychlorinated biphenyls (PCBs) in the LPRSA. These are the hazardous substances EPA has determined are overwhelmingly driving the risk to human health and the environment in the LPRSA, and the Undersigned Entities are simply not associated with those contaminants. With regard to the other hazardous substances identified as contaminants of potential concern (COPCs) or ecological concern (COPECs), namely various pesticides and metals, discharges of such hazardous substances by the Undersigned Entities are minimal or non-existent, and have not resulted in impacts to the Lower Passaic River that require remediation.

Therefore, the Undersigned Entities respectfully request that EPA begin a process to define and execute *de minimis* settlements with those parties as prescribed by CERCLA Section 122(g). We commit to cooperate in that effort.

Background

As you know, it is the "extremely high concentrations of dioxin" at and from the former Diamond Alkali manufacturing facility that resulted in the addition of that facility to the National Priorities List in 1984.[1] In fact, the initial investigations at what became the Diamond Alkali Superfund Site were part of "EPA's National Dioxin Strategy."[2] Dioxin-driven investigations also led to the 1994 identification of Operable Unit 2 of the Diamond Alkali Superfund Site, the lower six mile stretch of the Passaic River, the 2002 identification of Operable Unit 3 of the Site, the entire LPRSA, and the 2004 identification of Operable Unit 4, Newark Bay.

Notwithstanding this basis for the NPL listing, at the request of the parties associated with the Diamond Alkali manufacturing facility, EPA has directed notice letters to well over one hundred entities alleged to have been dischargers to the LPRSA.[3] This limited action was taken by EPA despite the fact that the LPRSA has been a highly industrial waterway since at least the 1800s, receiving direct and indirect discharges including hazardous substances from hundreds, if not thousands, of facilities, including numerous sewage treatment facilities.

The Undersigned Entities

The Undersigned Entities are alleged to have owned or operated one or more of those thousands of facilities, and are further alleged to be potentially responsible for releases from their facilities to the LPRSA of one or more of various organic compounds, metals, petroleum products, and phthalates, but none of the hazardous substances that EPA has identified as the primary risk drivers in the LPRSA.

Although hundreds, if not thousands, of facilities have released hazardous substances to the LPRSA, the Undersigned Entities are among only seventy-three PRPs that have, since 2007, spent more than $100,000,000 completing the Remedial Investigation and Feasibility Study (RI/FS) for the LPRSA pursuant to the Administrative Settlement Agreement and Order on Consent, CERCLA Docket Number 02-2007-2009, May 8, 2007 (the RI/FS AOC).

The Undersigned Entities are also among the seventy PRPs that conducted the removal and capping of contaminated sediment in the so-called RM 10.9 Study Area pursuant to the RM 10.9 AOC at a cost in excess of $20,000,000. As you know, the entities responsible for all or nearly all of the releases of 2,3,7,8-TCDD that EPA has determined is the major risk driver in the LPRSA did not participate in that response action and are no longer participating in the RI/FS.

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[1] *See* NPL Site Narrative, September 21, 1984.
[2] *See* Record of Decision for Diamond Alkali Superfund Site, September 1987, page 4.
[3] *See* Focused Feasibility Study Report for the Lower Eight Miles of the Lower Passaic River, prepared by the Louis Berger Group, Inc. in conjunction with Battelle HDR/HydroQual, for EPA Region 2 and the United States Army Corps of Engineers, Kansas City District (2014) (FFS), section 1.2.2, page 1-6 (FFS). *See also* RM 10.9 AOC, paragraph 11.

The PRPs performing response actions pursuant to the RI/FS AOC and the RM 10.9 AOC have been left to their own devices to allocate among themselves financial responsibility for the hundreds of millions of dollars of work that is the subject of those agreements with EPA. Significantly, those allocations did not account for critical distinctions EPA has now recognized between individual hazardous substances and the extent to which they drive perceived risk to human health and the environment. The entities responsible for the contamination at and from the former Diamond Shamrock facility are no longer participating in those allocations. Moreover, those allocations do not include the hundreds, if not thousands, of other PRPs that have not participated in response actions to date. As a result, PRPs' ability to allocate the costs of any future work is severely constrained.

Prior Request for *De Minimis* Consideration

In February 2007, some of the Undersigned Entities joined other PRPs in requesting that EPA enter into *de minimis* settlements respecting the LPRSA with PRPs entitled to such treatment under Section 122(g) of CERCLA and the EPA guidance implementing that statutory directive.[4]

EPA's response to that request was that it was "of the opinion that at the present time, EPA is not able to assess individual PRP's [sic] contributions relative to the total volume of waste at the Site and that EPA does not possess sufficient information to distinguish among various tiers of PRPs without risk that new post-settlement information will render a *de minimis* settlement inequitable and unsupportable in retrospect."[5]

The Current Situation and Findings Support *De Minimis* Settlements

Now that the Remedial Investigation Report, prepared by the Louis Berger Group, Inc. in conjunction with Battelle HDR/HydroQual, for EPA Region 2 and the United States Army Corps of Engineers, Kansas City District (2014) (the RI), and the FFS for the Lower Eight Miles of the Lower Passaic River (the Lower Eight Miles) have been issued, and the RI/FS for the entire LPRSA is nearly complete, EPA's previous position about not possessing sufficient information to enable *de minimis* settlements no longer applies.

Again, EPA's own FFS concludes that it is dioxins, furans, and PCBs that are primarily responsible for the risk to human health and the environment in the Lower Eight Miles.

Since EPA has acknowledged that the Lower Eight Miles contain eighty to ninety-five percent of the total load of hazardous substances in the entire LPRSA,[6] it should come as no surprise that the soon-to-be-completed RI/FS for the entire LPRSA will not identify any additional hazardous substances as risk drivers.

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[4] *See* Correspondence to Alan J. Steinberg, Regional Administrator, EPA Region II, dated February 2, 2007.

[5] *See* Correspondence from George Pavlou, Director, Emergency and Remedial Response Division, EPA Region II, to David J. Hayes, Esquire, Latham & Watkins, LLP, dated March 5, 2007.

[6] *See* FFS, page 1-11.

As a result, whether or not EPA possessed sufficient information to enter into *de minimis* settlements respecting the LPRSA in 2007, the Agency certainly has more than enough information to honor Section 122(g)'s directive and EPA's own guidance implementing that directive by entering into *de minimis* settlements now. Such *de minimis* settlements are particularly useful to the Government in complex cases involving numerous PRPs. In fact, Agency guidance recognizes that the early elimination of minor potentially responsible parties is "one of the primary goals" of Section 122(g).[7]

It is not necessary "to prepare a waste-in list or volumetric ranking before considering a party's eligibility for a *de minimis* settlement."[8] This is particularly significant where, as noted, the alleged contributions from the Undersigned Parties contained none of the primary risk drivers, and none or only *de minimis* levels of any other risk-associated substances.

Taking this statutorily required action consistent with EPA's own guidance will also fulfill EPA's commitment in the RI/FS AOC to "take measures to obtain the participation of Non-Settling Parties or newly identified parties as the RI/FS proceeds."[9]

Otherwise, those PRPs primarily responsible for the releases of hazardous substances driving response actions in the LPRSA will continue to contribute far less than their fair share of the cost of those response actions, and many PRPs will contribute nothing at all, while a small percentage of the PRPs, including the Undersigned Entities, which are either not liable or clearly entitled to *de minimis* treatment under Section 122(g), will continue to be asked to pay far more than their fair share.

In the continued absence of a *de minimis* settlement process, a Gordian knot of contribution litigation is inevitable, involving hundreds, if not thousands, of entities with ties to the Passaic River watershed. As EPA is aware, the LPRSA has already spawned such unwieldy and inefficient contribution litigation. In a lawsuit brought by the State of New Jersey against the owners and operators of the Diamond Alkali manufacturing facility, and successors in interest, two of the defendants filed a third party complaint against more than three hundred third-party defendants, and lists identifying thousands of potential fourth-party defendants were filed with the Court. *See* New Jersey v. Occidental Chemical Corporation, et al., Superior Court of NJ, Docket Number ESX-L9868 (PASR). The burden to *de minimis* PRPs of being forced to endure the costs of defending cost recovery litigation brought by other PRPs is exactly what Section 122(g) and EPA's own guidance are intended to avoid. Aside from needless expense and gross inequity for *de minimis* parties, such litigation and the ensuing gridlock will also be a major obstacle for EPA's remediation efforts.

The Requirements of Section 122(g) and EPA's Implementing Guidance

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[7] *See* Interim Guidance on Settlements with De Minimis Waste Contributors under Section 122(g) of SARA (June 19, 1987), page 10.
[8] *See* Streamlined Approach for Settlements with De Minimis Waste Contributors under CERCLA Section 122(g)(1)(A) (July 30, 1993, OSWER Directive 9834.7-1D) (Streamlined Approach), page 1 (emphasis in original).
[9] *See* RI/FS AOC, paragraph 7.

CERCLA Section 122(g) mandates that "[w]henever practicable and in the public interest," [EPA] "shall as promptly as possible reach a final settlement with a potentially responsible party" (i) "if such settlement involves only a minor portion of the response costs at the facility concerned," (ii) "the amount of the hazardous substances contributed by that party to the facility" "is minimal in comparison to other hazardous substances at the facility," and (iii) "the toxic or other hazardous effects of the substances contributed by that party to the facility" "is minimal in comparison to other hazardous substances at the facility." In fact, CERCLA requires EPA to notify a PRP of its *de minimis* eligibility "[a]s soon as practicable after receipt of sufficient information to make a [*de minimis*] determination."[10]

National guidance instructs how Regions are to implement Section 122(g)'s mandate. "To determine whether a PRP is eligible for a waste contributor de minimis settlement, a Region need only assess the individual PRP's waste contribution relative to the volume of waste at the Site. . . . [T]he amount does not need to be a precise figure."[11] "To reduce resource implications for de minimis parties, Regions should actively assist in forming [a] de minimis group once there is a potential for a de minimis settlement."[12]

The Application of Section 122(g)(1)(A) and EPA's Guidance to the Undersigned Entities

A. The Amount of Hazardous Substances Contributed by the Undersigned Entities is Minimal in Comparison to the Total Amount of Hazardous Substances in the LPRSA

It bears repeating that there is no credible evidence that any of the Undersigned Entities released any dioxins, furans, or PCBs to the Passaic River.

As recognized in the FFS, upstream and downstream sources continue to release to the LPRSA all of the hazardous substances identified by EPA as being of potential concern except 2,3,7,8-TCDD. Similarly, tributaries to the Lower Passaic River as well as Combined Sewer Overflows and Storm Water Outfalls continue to release virtually all of the hazardous substances (except 2,3,7,8-TCDD) identified by EPA as being of concern in the LPRSA, and serve as ongoing sources that will maintain such hazardous substances in LPRSA sediments at regional background levels. In fact, in-depth investigations of the likely fate and transport of the hazardous substances allegedly released to the LPRSA by the Undersigned Entities indicate that such alleged releases are minimal in comparison to these ongoing releases and regional background levels.

Each of the Undersigned Entities is prepared to demonstrate to the EPA that releases from their facilities are not driving the risk to human health and the environment that requires remediation of the LPRSA.

Since none of the Undersigned Entities are responsible for ***any*** contribution of the primary

[10] 42 U.S.C. § 122(g)(10).
[11] Streamlined Approach, page 1.
[12] Streamlined Approach, pages 4-5.

hazardous substances driving risk in the LPRSA, and their contributions of any other hazardous substances pale in comparison to the total mass of those hazardous substances in the LPRSA, the total maximum alleged contribution of those hazardous substances by any of the Undersigned Entities is minimal in comparison to the total amount of those hazardous substances in the LPRSA.

Therefore the first element of Section 122(g)'s *de minimis* directive is satisfied.

B. The Toxic or Other Hazardous Effects of the Hazardous Substances Contributed by the Undersigned Entities is Minimal in Comparison to the Toxic or Other Hazardous Effects of all of the Hazardous Substances in the Lower Passaic River Study Area

As discussed above, the FFS makes clear EPA's conclusion that the perceived human health risk relating to the presence of hazardous substances in the LPRSA is attributable to the presence of dioxins, furans, and PCBs.

The FFS makes equally clear EPA's conclusion that nearly all the perceived ecological risk relating to the presence of hazardous substances in the LPRSA is attributable to these same hazardous substances.

Because the Undersigned Entities are not responsible for any releases of 2,3,7,8-TCDD (or any dioxins or furans), or PCBs, to the LPRSA, the toxic or hazardous effects of the hazardous substances the Undersigned Entities allegedly contributed to the Lower Passaic River are, at most, minimal compared to the toxic or hazardous effects of the dioxins, furans and PCBs that overwhelmingly drive the perceived human health and ecological risk at the LPRSA.

A Proposed Path Forward

EPA now has more than enough information to support *de minimis* settlements respecting the LPRSA consistent with its statutory mandate and its own guidance. EPA has the benefit of volumes of information respecting the nature and mass of the hazardous substances released at the LPRSA, and which of those hazardous substances contribute to the perceived human health and ecological risk related to the site, and to what degree. Based on that evidence, it is highly unlikely that anyone, including EPA, could succeed in establishing that any of the Undersigned Entities are legally responsible for any response actions in the LPRSA. However, with the benefit of that information, and the information available respecting the alleged releases of hazardous substances by PRPs eligible for *de minimis* settlements, including the Undersigned Entities, an allocation of responsibility for the continuing response to those releases is certainly practicable. We respectfully request that EPA now initiate a process to define and execute *de minimis* settlements as prescribed by Section 122(g) and EPA's own guidance.

In closing, we reiterate that we view this process as complementary to the CPG's preparation of the RI/FS for the LPRSA.

Annexed hereto please find contact information for the Undersigned Entities (Appendix A) and brief summaries of their respective operations and alleged nexus to the LPRSA (Appendix B).

The Undersigned Entities are committed to cooperating in the development of a *de minimis* settlement and look forward to meeting with EPA soon to define and implement a process for bringing such a settlement to fruition. We will look forward to hearing from you about when we might meet to that end.

Very truly yours,

Daniel Riesel
On behalf of Coats & Clark, Inc. and the Undersigned Entities

Jeffrey B. Gray
Jeffrey B. Groy
On behalf of CBS Corp.

Stephen Swedlow
On behalf of Croda Inc.

Norman W. Spindel
On behalf of Franklin-Burlington Plastics Inc.

Roger Florio
On behalf of General Electric Company

Earl W. Phillips, Jr.
On behalf of Goodrich Corp.

Earl W. Phillips, Jr.
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Paul K. Milmed
Paul Milmed
On behalf of Pfizer Inc.

John R. Holsinger
On behalf of Tate & Lyle Ingredients Americas LLC

Paul K. Milmed
Paul Milmed
On behalf of Wyeth LLC

cc: Walter Mugdan

Appendix A: Contact Information

Signatory	Contact Information
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FRE 408 SETTLEMENT COMMUNICATION

CBS CORPORATION

Summary of Alleged Nexus to Lower Passaic River

In September 2003, EPA advised CBS Corporation (CBS) of its potential liability with respect to the Lower Passaic Site as a result of alleged discharges from Westinghouse Electric Corporation's (Westinghouse's) former operations located at 95 Orange Street, Newark, New Jersey. In February, 2009, CBS was joined as a Third Party Defendant in New Jersey State litigation by Third Party Plaintiffs, Maxus and Tierra, again alleging that CBS may be liable to them in contribution as a result of alleged discharges from the former Westinghouse Orange Street location. *See NJDEP v. Occidental Chemical Corp., et al* (Third Party Complaint "B", Paragraphs 2620 through 2631). Neither EPA nor Third Party Plaintiffs in the New Jersey litigation have alleged any other CBS nexus to the Lower Passaic River Study Area. A description of the operations and alleged discharges relating to the former Westinghouse Orange Street facility are provided below.

I. Operations

Westinghouse initially began operations at the Orange Street plant in Newark in or around 1891. Operations were temporarily idled between 1895 through 1900. The plant opened again in 1900 and operated until 1983, when Westinghouse sold the plant and property and moved the operations to another state. Plant operations varied and grew over the years, but were mainly focused on the production of various electric meters, electrical instruments/motors and relay instruments.

II. Alleged Discharges

The Orange Street plant was located nearly one-third of a mile from the Passaic River in the general area of River Mile 5.7. The plant was serviced by the PVSC, and was in the vicinity of the PVSC's Clay Street CSO District. Sanitary, process and storm water flows would have been directed to the PVSC for treatment and conveyance outside of the Lower Passaic River. Effluent may have included oil/grease, chlorides, cyanides, bromides and various common metals (reported at trace levels in Waste Effluent Surveys submitted to the PVSC in the early/mid 1970s). Neither dioxin nor PCBs were manufactured or used in the manufacturing process at this location. This plant has not been in operation for over 30 years, with the plant and property being sold in 1983. Any "direct" discharges to the River would have occurred before 1924 when the PVSC trunk line was constructed, and thus any discharges from that time are not relevant to the proposed remedial efforts (*i.e.*, any alleged historic impacts were removed during prior dredging operations and/or are buried deep beneath decades of sedimentation).

III. Additional Factors

CBS is among the first parties to cooperate with the United States regarding this Site, signing the first Section 122(h) settlement and subsequent Consent Orders with EPA to conduct the RI/FS and the RM10.9 removal action. This cooperation came notwithstanding the fact that there is no evidence that Westinghouse's former operations contributed the contaminants (primarily dioxin or PCBs) that are driving the extensive investigation and/or response actions conducted or contemplated for the LPR. Any materials that – even under highly conservative assumptions – may have reached the River from Westinghouse's remote location would have been at levels below background or negligible, at best (e.g., common metals at trace concentrations). Moreover, as noted above, the Orange Street plant was not

located directly along the Passaic River, and has not been in operation for nearly 30 years. Any "direct" discharges to the River would have occurred before 1924 when the PVSC trunk line was constructed, and thus any discharges from that time are not relevant to the proposed remedial efforts (*i.e.*, any alleged historic impacts were removed during prior dredging operations and/or are too deep). As such, any plant-related discharge that arguably made it to the Passaic represents – at best – a *de minimis* contribution to the alleged risk and proposed remediation of the river sediments.

It should be noted that CBS was not named as a Respondent to NJDEP's Directive but did participate in the settlement of Tierra's State Litigation.

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FRE 408 SETTLEMENT COMMUNICATION

COATS & CLARK, INC.
Summary of Alleged Nexus to the Lower Passaic River

Coats & Clark's connection to the Lower Passaic River ("LPR") is a thread mill operated by its putative predecessor, the Clark Thread Company ("Clark Thread"), between 1865 and 1949. Clark Thread never used or discharged dioxin or PCBs, and it closed its New Jersey mill before the cessation of navigational dredging and the subsequent accumulation of contaminated sediment that gives rise to EPA's proposed remedy. While a minority of Clark Thread's dye processes may have involved copper sulfate or other non-mercury metal salts, these were largely phased out by the turn of the twentieth century and do not have any material impact on the current sediment risk or remedial cost. Therefore, Clark Thread's share of remedial liability is - at most - de minimis.

I. Operations

Clark Thread's mill, located in Newark on the western bank of the Passaic River, was devoted entirely to production of thread, principally from cotton. Thread production begins with a series of dry processes (included combing, carding, spinning and twisting of cotton bales) that produce no liquid effluent, followed by a series of wet processes (washing, bleaching, and, for certain thread, mercerizing and/or dyeing.) Clark Thread expanded its mill across the Passaic River to East Newark in 1873, and connected to the Passaic Valley Sewerage Commission's trunk sewer by 1927. Between the early 1920s and the early 1930s, Clark Thread transferred its wet processes to an annex in Bloomfield, New Jersey, which featured an on-site wastewater treatment system. Clark Thread sold its East Newark property in 1935, shut down its Newark operations in 1947, and sold its Bloomfield property in 1949, moving its New Jersey operations to a new mill in Georgia.

II. Alleged Discharges

On April 13, 2009, the Lower Passaic River Study Area Cooperating Parties Group submitted a PRP Data Extraction Form to EPA that purported to describe Clark Thread's Newark, East Newark and Bloomfield operations. In fact, the Data Extraction Form includes virtually no specific information about Clark Thread's operations or discharges, relying instead upon inapposite descriptions of modern dyes and production processes that were not used in Clark Thread's New Jersey mill. The section "Dioxin Formation in the Textile and Dye Industry," acknowledges that there is no evidence connecting Clark Thread to dioxins, relying instead on a recent academic study of disperse dyes, which were not used by Clark Thread and are in fact incompatible with cotton thread production. The section "PCB Formation in the Textile and Dye Industry" also acknowledges the absence of evidencing connecting Clark Thread to PCBs, and instead describes the potential formation of PCBs in the production of two classes of pigments. Clark Thread did not use these or any other pigments, which are not utilized to dye thread.

The most specific description of Clark Thread's alleged discharges in the Data Extraction Form is from a 1926 report to the Passaic Valley Sewerage Commissioners, which alleged the release of "weak dye waste" from Newark and East Newark. The report contains no additional information about the constituents of such effluent, which, as described below, is unlikely to have contained any contaminants of concern to the LPR remediation.

Most of Clark Thread's liquid effluent was generated in its washing and bleaching operations, and would have consisted of water, soap, salt, caustic soda, cotton fines, and residual bleach, without any known contaminants of concern. Mercerizing, which was used to add strength and luster to limited number of thread products, produced little liquid effluent and also involved no contaminants of concern. Finally, when dyeing of thread was required, most of the dye processes available during Clark Thread's era of operations also involved no contaminants of concern. A small number of Clark Thread's dye processes could have used metal salts, primarily as mordants or after-treatments, although these were largely replaced by other, non-metalized processes around 1900. During the course of dyeing, the vast majority of the metals would have been exhausted on the thread along with dye and would not have been discharged.

III. Additional Factors

In the event that metals were discharged by Clark Thread, they would have been in a soluble state, with most of the effluent remaining in the water column and not settling into the LPR sediment. Metals that did settle would have been subject to repeated navigational dredging extending through Clark Thread's era of operations, and sediment that was not dredged would be buried under decades of subsequent sedimentation postdating the closure of Clark Thread's New Jersey mill. Finally, as set forth in the accompanying letter, in the event that any pre-1950 metal discharges were not dredged or deeply buried, they represent a de minimis contribution to the risk and proposed remediation of the LPR sediment.

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CRODA, INC.
Summary of Alleged Nexus to the Lower Passaic River

I. Operations

Hummel Lanolin Corporation ("HLC") operated a lanolin production facility located at 185 Foundry Street in Newark, NJ ("HLC facility"). The HLC facility was in operation from approximately the late 1950s to 1987. HLC was a wholly owned subsidiary of Croda, Inc. ("Croda"), until its merger into Croda in 1989. The HLC facility produced lanolin and lanolin-based derivatives and blends.

Lanolin is a wax derived from wool grease, and it is used primarily in cosmetics and health care products. In nature, wool grease protects sheep's skin from the environment. The lanolin derived from wool grease plays a similar role when applied to human skin.

Lanolin is produced by refining wool grease through a series of washing, neutralizing, and bleaching operations. Wool grease and water were the primary raw materials used in the HLC lanolin production process. Other raw materials used in the process included benzoyl peroxide, citric acid, hydrogen peroxide, isopropyl alcohol, sodium chlorite, caustic soda, soda ash, sulfuric acid, and EDTA (to remove Ca^{2+}).

Neither dioxin nor PCBs were manufactured or used at the HLC facility. To Croda's knowledge, the lanolin production process does not create – or otherwise implicate – dioxin or PCBs.

II. Alleged Discharges

The HLC facility's effluent discharged into the sewer system. It is alleged that this sewer system connected to the Roanoke Avenue combined sewer system and that wastewater from the Roanoke Avenue combined sewer system was periodically discharged into the Passaic River due to a malfunctioning regulator.

In 1978, the HLC facility's effluent was tested for the metals cadmium, chromium, mercury, and lead. No cadmium, chromium, or mercury were detected, though trace levels of lead were detected. It has also been alleged that HLC's effluent contained arsenic, cadmium, chromium, copper, mercury, nickel, and zinc. Croda, however, is not aware of any effluent test results corroborating these allegations based on its investigation to date.

In 1986, wool grease sludge extracted from a drainage basin through which the HLC facility's effluent flowed was tested for, *inter alia*, a variety PCBs. None were detected.

Croda is not aware of any evidence that dioxins or PCBs were present in its effluent, nor would it expect them to be.

III. Additional Factors

Croda is a signatory to the initial Section 122(h) settlement and subsequent Consent Orders with USEPA to conduct the RI/FS and the RM10.9 removal action. Croda also

participated in the recent settlement of the New Jersey state court litigation. Because Croda's former facility was located below River Mile 2, previous dredging of the river by the Army Corps of Engineers would likely have removed sediments containing any hazardous substances allegedly released by Croda. Moreover, to the extent any such hazardous substances remain, they are of such character and amount that they pose no risk to the river that requires remediation.

CONFIDENTIAL
FRE 408 SETTLEMENT COMMUNICATION

FRANKLIN-BURLINGTON PLASTICS, INC.
Summary of Alleged Nexus to the Lower Passaic River

I. Operations

Beginning in 1976, Franklin Plastics Corporation purchased property at 113 Passaic Avenue, Kearny, New Jersey (the "Site") and commenced plastics manufacturing. The Site had previously been part of a larger property owned and operated by Congoleum Corporation, an entity unrelated to Franklin Plastics Corporation. In 1990, Franklin Plastics Corporation merged into Franklin-Burlington Plastics, Inc. ("FBP"), which continued plastics manufacturing. FBP ceased manufacturing in 2010 and closed the plant. Plant buildings were subsequently demolished and the Site is currently vacant.

During operations from 1976 to 2010, plastics manufacturing at the Site included the addition of various colorants, stabilizers, and plasticizers to vinyl resin in a batch mixer before being extruded into plastic material, which was then cut into small cubes or pellets. The largest component of the plastic was the vinyl resin itself, an inert white powder. Other raw materials used in the process consisted of liquid stabilizers and plasticizers, as well as colorants and other small quantities of inert materials.

II. Alleged Discharges

Up until 2004, the plant discharged water to the Passaic River under an NJPDES permit. The discharge water included both non-contact cooling water, such as from the cooling tower, as well as contact cooling water from baths used to cool the plastic being processed. The baths were non-circulating tanks that would cool the finished plastic sufficiently to allow it to be cut into cubes. Other sources of potential contributions to the NJPDES discharge water or to the Passaic River directly included fugitive dusts or powders, as colorants were typically powders.

It has been alleged that soils and groundwater at the larger former property, including the Site, contained plasticizer phthalates, metals, petroleum hydrocarbons, volatile organic compounds and semi-volatile organic compounds, PAHs, and PCBs; phthalates, petroleum hydrocarbons, and lead have been reported to be in an upgradient well at the property. Based on its investigation to date, FBP is not aware that any of these materials, with the possible exception of phthalates, metals, and petroleum hydrocarbons in de minimis quantities, were present in its effluent. FBP is not aware of any information that its effluent contained 2,3,7,8-TCDD, dioxin TEQ, PCBs (total and TEQ), DDx, dieldrin, or mercury, nor would FBP expect that its effluent would contain such hazardous substances.

III. Additional Factors

FBP is a signatory to the initial Section 122(h) settlement and subsequent Consent Orders with USEPA to conduct the RI/FS and the RM10.9 removal action. FBP also participated in the recent settlement of the New Jersey state court litigation. To the extent FBP discharged hazardous substances to the river, they are of such character and amount that they pose no risk to the river that requires remediation.

CONFIDENTIAL
FRE 408 SETTLEMENT COMMUNICATION

RCA (GENERAL ELECTRIC COMPANY)
Summary of Alleged Nexus to the Lower Passaic River

I. Operations

RCA manufactured radio tubes in Harrison, New Jersey, from approximately 1930 until early 1976.[1] The main plant was located at 415 South 5th Street in Harrison, approximately one-half mile inland from the Passaic River. RCA acquired the main plant from GE, which manufactured incandescent lamps, and subsequently radio tubes there from 1882 until 1930. In 1950, RCA acquired a building at 1000 2nd street in Harrison (designated by RCA as Building 55) which was also used in radio tube production until approximately 1976.[2]

II. Alleged Discharges

In September 2006, EPA advised GE that, "the Agency believes that hazardous substances were released from the former RCA Corporation facilities located at 415 South 5th Street and 1000 South 2nd Street in Harrison, New Jersey, into the Lower Passaic River Study Area." General Notice Letter from EPA Region 2 to General Electric Company (GE), Sept. 11, 2006. The letter went on to advise that EPA believed GE, as a successor to RCA,[3] "may be potentially liable for response costs which the government may incur relating to the study of the Lower Passaic River." Id. at page 2. These allegations were repeated in a third-party complaint filed in the Superior Court of New Jersey on February 4, 2009. See *NJDEP v. Occidental Chemical Corp. et al*, Third Party complaint "B," at paragraphs 2477-2489 ("RCA Site"). Neither EPA nor third-party plaintiffs in the New Jersey litigation have alleged any GE nexus to the Lower Passaic River Study Area (LPRSA) other than the former RCA facilities described above.

In July 2006 the Lower Passaic River Study Area Cooperating Parties Group (CPG) submitted a "PRP Extraction Form and Evidence" package for the main plant and Building 55 to EPA which was presumably the source of the Agency's conclusion that GE is a PRP for the LPRSA. This package included Waste Effluent Survey (WES) forms submitted by RCA to the Passaic Valley Sewer Commission (PVSC) in 1972 and 1975 relating to wastewater discharges from the main plant and Building 55.

The WES for Building 55 noted that wastewater discharged to the sanitary sewer from this building contained small (parts per billion) quantities of several metals and "trace" (<1ppb) quantities of several solvents. However, Building 55 was not located within a Combined Sewer Overflow (CSO) district so any sanitary sewer discharges from Building 55 could not have been diverted to the Passaic River by the PVSC. A note appended to the WES stated there was also a separate (non-process) discharge from Building 55 to the Passaic via storm drains, consisting "solely of cooling water with 75% untreated city water and 25% being from air conditioning cooling towers treated in accordance with specifications established by Betz Laboratories …." Data reported for a composite sample of this cooling water discharge was reported with the WES, but no individual Contaminants of Potential Concern (COPCs) for the LPRSA were identified.

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[1] The plant was also involved in production activities for the U.S. government during World War II.

[2] Building 55 was located two blocks east and 4 blocks south of the main plant, approximately 500 feet from the Passaic River.

[3] RCA was acquired by GE in 1986.

The 1972 WES for the main plant listed the following measurements of plant wastewater discharged to the sewer (all in mg/l):

- Cobalt < 0.2
- Copper <0.05
- Molydenum <0.1
- Nickel <0.1
- Gold <0.1
- Silver <0.1
- Cyanides as CN 0.22
- Trichloroethylene <1

RCA submitted a second WES for the main plant in 1975, but as noted in the cover letter, "it was agreed there was no need to resurvey our waste effluent since current discharges would be even less than those indicated in 1971 due to reduced production." Letter from W.E. Scholz, RCA to Walter J. Davis, PVSC, October 2, 1975.[4]

No other evidence of COPCs in the wastewater discharges from the RCA Harrison main plant or Building 55 was included with the PRP Extraction Form and Evidence provided by EPA, and GE has no other such information.

[4] Consistent with the substance of the cover letter, the same measurements reported on the 1972 WES were inserted in the 1975 WES; a comparison of the two 1972 forms shows, however, the 1972 measurements for Building 55 were provided for the main plant (presumably inadvertently).

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GOODRICH CORP.

Summary of Alleged Nexus to the Lower Passaic River

I. Operations

Through a 1998 acquisition, Goodrich Corporation (Goodrich) acquired an ownership interest in Kalama Chemicals, Inc. (KCI), which operated a facility at 290 River Drive in Garfield, New Jersey from 1982 to 1994. During this time the facility manufactured various chemicals intended for human use, including salicylic acid and several salicylate compounds (for medicinal, cosmetic and flavoring uses), and parabens (a bactericide/fungicide preservative), benzoic acid (a food preservative), and phenol (a/k/a carbolic acid, a disinfectant). All products were biodegradable and non-persistent.

Kalama terminated operations at the site in 1994.

II. Alleged Discharges

At all times during KCI operations, process wastewater from the site was connected and discharged to the Passaic Valley Sewerage Commission (PVSC) system. Discharges from the site to the Passaic River in 1982-94 consisted primarily of once-through, non-contact cooling water, through two outfalls covered by permits issued by the New Jersey Department of Environmental Protection (NJDEP). Stormwater was also discharged to the River from the site. Alleged discharges from the site in 1982-94 consisted of impacted groundwater from historical operations and releases, and leaking underground storage tanks and sewer lines. The primary substances in these alleged discharges were benzene and toluene. Even if such discharges are assumed to have occurred, both substances are volatile, biodegradable and non-persistent liquids, and are not associated with the risk in the Lower Passaic River.

No operations at or discharges from the site in 1982-94 were associated with or contained dioxins or PCBs, or other substances that have driven and will drive the risk in the Lower Passaic River.

III. Additional Factors

Goodrich has fully cooperated with EPA since EPA first contacted Goodrich regarding the LPRSA. Goodrich is a signatory to the 2007 Administrative Order on Consent (AOC) to perform the RI/FS and the 2008 AOC to perform the RM 10.9 removal action. Goodrich also participated in the 2014 settlement with the New Jersey Department of Environmental Protection (NJDEP) in the state court litigation. Goodrich was not named as a respondent in the NJDEP Directive.

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OTIS ELEVATOR CO,
Summary of Alleged Nexus to the Lower Passaic River

I. Operations

Otis Elevator Company operated a manufacturing facility at 1000 First Street in Harrison, New Jersey for approximately 70 years, from 1910 through 1979-1980. During this time, Otis assembled or manufactured elevators, escalators, and related machinery.

During World War II (1940-45), Otis also manufactured aeronautical parts and machinery for the United States government in newly-constructed buildings adjacent to the Otis facility. After the war, the U.S. government sold the buildings and the land to Otis. Otis used the former aeronautical plant for elevator and related machinery manufacturing, and in 1950 sold off part of the plant to an unrelated third party.

In 1980 Otis shut down its Harrison facility and sold it to an unrelated third party.

II. Alleged Discharges

Otis operations used relatively limited quantities of water, resulting in the generation and discharge of once-through, non-contact cooling water and a low-strength industrial wastewater. The once-through non-contact cooling water was never contaminated by plant operations, and was discharged to the Passaic River. The Otis industrial wastewater contained no dioxin or PCBs, and only very low or trace levels of common metals. Prior to 1924, this wastewater was discharged to the Town of Harrison sewer system. Since 1924, the wastewater was at all times discharged to the Passaic Valley Sewerage Commission (PVSC) system for treatment and conveyance outside of the Lower Passaic River (LPR). PVSC records also indicate two minor incidents that led to inadvertent limited discharges (oil, elevated pH boiler blowdown) to the LPR. The only other discharges to the Passaic River from the Otis site were primarily roof drains and stormwater drains.

Otis has not been presented with and is otherwise not aware of any evidence that its operations were associated with the substances that have driven and will drive the investigation, risk or remedy in the Passaic River (primarily dioxin and PCBs), or that Otis' operations otherwise resulted in contamination of the Passaic River that contributes to the need for the extensive and ongoing investigations or current or potential further remedial measures. In addition, any materials potentially associated with Otis wastewater discharges to the River, even under conservative assumptions, were below background conditions or negligible. This is due to the nature of the processes at the Otis plant, low concentrations in Otis discharges, the significant amount of dilution occurring in the river, and the early connection of Otis' discharges to the PVSC. Beyond that, the potential for sediment impacts associated with Otis discharges was further limited or eliminated by periodic navigation channel maintenance dredging in the LPR.

III. Additional Factors

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Otis has fully cooperated with EPA since EPA first contacted Otis regarding the LPRSA. Otis is a signatory to the 2004 Administrative Order on Consent (AOC) to fund the RI/FS, the 2007 AOC to perform the RI/FS, and the 2008 AOC to perform the RM 10.9 removal action. Otis also participated in the 2014 settlement with the New Jersey Department of Environmental Protection (NJDEP) in the state court litigation. Otis was not named as a respondent in the NJDEP Directive.

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PFIZER INC. – FORMER DISTRIBUTION CENTER, 230 BRIGHTON ROAD, CLIFTON, N.J.

Summary of Alleged Nexus to the Lower Passaic River

I. Operations

The facility was an office and warehouse space that was used for storage and distribution purposes. It is located adjacent to MacDonald's Brook, a tributary of the Passaic River. Products stored at and distributed from the facility included prescription drugs, consumer health care products, and ingredients for the food and beverage industry. These products were delivered to the facility in containerized and boxed condition. There were no manufacturing operations at the facility, and there was no mixing, blending, or original packaging operations conducted for the products stored at and distributed from it. No process waste streams or process waste waters were generated. Sanitary wastewater was discharged to the City of Clifton's sanitary sewer. Routine chemicals necessary to maintain a warehouse were stored on site in *de minimis* quantities. From an ISRA report in connection with the closure of the facility in 1995, records show there was a can of acetone stored in a flammable storage area, a cylinder of acetylene in the maintenance shop, a cylinder of chlorodifluoromethane in the warehouse, and a can of sodium hydroxide in the warehouse. The ISRA report referenced the 1988 removal of a 10,000 gallon fuel oil UST. Sampling at that time found low levels of TPH, well below any cleanup requirements. Upon the sale of the property NJDEP issued a No Further Action Letter and Covenant Not to Sue. To our knowledge, there is no evidence of any discharges from this facility, in any amounts, of any of the COPCs or COPECs identified by EPA in connection with the Lower Passaic River Study Area ("LPRSA").

II. Alleged Discharges

Pfizer received a General Notice Letter from EPA dated September 15, 2003, alleging that it believes that hazardous substances from this facility were released into the Lower Passaic River. As far as Pfizer is aware, the only report or document forming the alleged basis for connecting the facility to any release of a hazardous substance is a one paragraph 1969 report from the Passaic Valley Sewerage Commission (a copy of which was faxed to Pfizer by EPA on March 27, 2003) stating that hexavalent chromium had allegedly been detected in cooling water discharged into MacDonald's Brook. Aside from the fact that hexavalent chromium is not one of the COPCs or COPECs identified at the LPRSA, Pfizer is prepared to demonstrate that any amounts of hexavalent chromium, used as a rust inhibitor, that could have been discharged as cooling water blowdown would have been *de minimis* at best. Moreover, Pfizer is prepared to demonstrate that if any hexavalent chromium had been discharged from the facility, it would have been reduced to trivalent chromium after mixing with stream water, and would have precipitated out of solution and been contained in stream sediments upstream of or within Hughes Lake. Hughes Lake is about a mile downstream of the facility, and contains a dam that would prevent stream bed sediments from migrating further downstream toward the Passaic River, which is another mile away.

In sum, the Pfizer facility did not release any LPRSA COPCs or COPECs, and the only hazardous substance that is alleged to have been released from the facility would never have reached the Passaic River at all.

III. Additional Factors

Pfizer has fully cooperated with EPA with respect to the LPRSA. It is a signatory to the initial 2004 and subsequent 2007 Administrative Orders on Consent to fund and perform the RI/FS for the LPRSA, and to the 2012 AOC to perform the RM10.9 removal action. In addition, it participated as a third-party defendant in the 2014 settlement of the Spill Act litigation brought by the NJDEP against Occidental Chemical, *et al.* Pfizer was not named in NJDEP's 2003 Directive identifying parties responsible for hazardous substances in the Lower Passaic River.

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FRE 408 SETTLEMENT COMMUNICATION

TATE & LYLE INGREDIENTS AMERICAS LLC
Summary of Alleged Nexus to the Lower Passaic River

I. Operations

Tate & Lyle Ingredients Americas LLC (Tate & Lyle) produces sweeteners and starches for use in food and beverages and other applications.

In 1968 Tate & Lyle, then known as A. E. Staley Manufacturing Company (A. E. Staley), moved its Staley Chemical Co. division (Staley Chemical) to Kearny, New Jersey. There Staley Chemical manufactured synthetic polymers, adhesives and leather finishes. In October 1978 A. E. Staley sold the Staley Chemical business, including the manufacturing plant on Third Avenue in Kearny, to Union Oil Company. A. E. Staley sold Staley Chemical's office building on Schuyler Avenue in Kearny to a different buyer in 1976.

Tate & Lyle has had no operating facility in New Jersey since 1978. Tate & Lyle has no employees who were employed by Staley Chemical. The only document Tate & Lyle has about Staley Chemical's operation is the 70-page contract for sale of the business.

II. Alleged Discharges

Staley Chemical's plant was adjacent to Frank's Creek, a tributary of the Passaic River at about river mile 3.

The allegations about discharges from the Staley Chemical plant and its nexus to the Passaic River are based on documents in a submission to EPA. Tate & Lyle cannot confirm the authenticity of the documents or the accuracy of the allegations. For purposes of this summary only, Tate & Lyle assumes that the documents are authentic and accurate. This is a summary of what they show.

Volatiles – One document from 1970 refers to a spill of ethyl acrylate (misspelled "acrelate" in the original documents) and that "some of the vapors released to the outside air". One document from 1971 refers to an acrylate odor from a sewer possibly originating at the Staley Chemical plant. The document mentions that the Staley Chemical plant uses methacrylate and methyl acrylate. It mentions a Staley Chemical past procedure of washing out monomer storage tanks into the sewer system, a procedure that had been halted. This would have been an infrequent occurrence limited to internal inspections of the storage tanks or to prepare for storage of something different in the tanks. It also refers to washing polymerization reactors but that the wash water does not contain any appreciable concentrations of monomer acrylates. The document also refers to the possibility that the odor being investigated may have come from a source other than Staley Chemical because other companies in the area also use monomer acrylates and because on an earlier occasion the Staley Chemical plant was not operating when a report was made about the odor.

Constituents of Discharged Wastewater – Two sets of documents from 1972 and 1975 reflect tests of wastewater effluent from the Staley Chemical plant and very low amounts of metals in the wastewater. A 1975 cover letter says "a fully quantitative analysis [was done] for lead and chromium since those are the ions that could possible [sic] be added to the water as a result of any washing of equipment". The test results show minor amounts of mercury but do not suggest that Staley Chemical discharged or introduced mercury to the wastewater.

Boiler Blow Down – One document refers to the discharge of boiler blow down to the storm sewer in 1974. It appears to be a report of an inspection of the Staley Chemical plant and a summary conclusion that the boiler blow down was "polluting" but with no detail about it. It includes a follow-up report that Staley Chemical promptly installed a blow down tank with a discharge to the sanitary sewer.

There is no evidence that Staley Chemical discharged dioxins, PCBs, DDX or mercury. Tate & Lyle does not know of any such discharges from the Staley Chemical plant. The raw materials that the documents say were used at the Staley Chemical plant did not include, and the processes at the Staley Chemical plant would not have produced, dioxins, PCBs, DDX or mercury.

III. Other Factors

Tate & Lyle received a General Notice Letter from EPA Region 2 based on those alleged discharges to the Lower Passaic River. Notwithstanding that none of the alleged discharges are of the hazardous substances driving the risks in the river, Tate & Lyle signed agreements to conduct the RI/FS and the RM 10.9 removal action. Tate & Lyle was also joined as a third party defendant in the state court litigation based on the same alleged discharges. Tate & Lyle participated in the recent settlement of that litigation.

Based on the nature and the insignificant amount of the alleged discharges from Staley Chemical, any contaminants to the Passaic River are *de minimis* as to both the risk and any proposed remediation.

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FRE 408 SETTLEMENT COMMUNICATION

WYETH LLC – FORMER SHULTON, INC. FACILITY, 697 ROUTE 46, CLIFTON, N.J.
Summary of Alleged Nexus to the Lower Passaic River

I. Operations

This facility (the "Shulton" site) is located adjacent to Weasel Brook, a tributary of the Passaic River. From approximately 1946 until 1991, when it was closed and remediated under ECRA/ISRA, the facility manufactured toiletries ("Old Spice," "Breck," etc.) and conducted related R&D activities. In addition to the Shulton operations, for some period of time until about 1971 or 1972, a tenant, Nitine Specialty Chemicals, used a portion of the site for its business of repackaging chemicals. None of the manufacturing processes conducted at the former Shulton facility, or the chemical repackaging operations of Nitine, resulted in the discharge to the Passaic River of any of the COPCs or COPECs identified by EPA in connection with the Lower Passaic River Study Area ("LPRSA").

II. Alleged Discharges

In March 2006, Wyeth received a Data Extraction Form ("DEF") package from the LPRSA Cooperating Parties Group which indicated that it had been submitted to EPA, and which presumably had formed the basis for EPA's issuance of a General Notice Letter to Wyeth on February 14, 2006. The DEF contains no express allegations of any discharges of dioxins, PCBs, pesticides or mercury from the Shulton site. We note that it does incorrectly state that Shulton manufactured some household insecticides at the site. (p.4; AEU 000084)[1]. Shulton did manufacture household insecticides, but never at the Clifton facility.

The discharges or potential discharges expressly alleged in the DEF simply did not result from operations at the Shulton site and are *de minimis* at most:

- The DEF alleges one direct nexus to the Lower Passaic River, *i.e.,* that during an ECRA investigation and remediation in 1991-1992 in connection with the cessation of operations at the site, sampling disclosed elevated levels of certain base neutral compounds in a drainage swale and along the bank of Weasel Brook. (p.4). However, in a Negative Declaration dated April 14, 1994, NJDEP determined that the concentrations of PAHs along the bank of Weasel Brook adjacent to the site originated from the deposition of PAH-containing sediments from off-site and upstream sources and *not* from the former Shulton site. (AEU000369). In any event, there is a dam in Weasel Brook approximately a mile downstream of the Shulton site and over a mile upstream from where the brook enters the Lower Passaic River, so if any contaminated sediments had originated from the former Shulton site, they would have been contained before reaching the Lower Passaic River. Moreover, any PAHs that may have come from the Shulton site, that somehow were not contained in sediments behind the dam in Weasel Brook, and that somehow reached the Lower Passaic River, would have been *de minimis* amounts at most. (PAHs are not among the COPCs identified as posing a human health risk in connection with the LPRSA, and although EPA has identified PAHs as a COPEC, it did not compute a remediation goal for PAHs and has stated that "the Upper Passaic River was the primary source of PAHs" to the LPRSA.[2])

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[1] Citations are to the page numbers of the DEF (*e.g.*, p.x) and the attachments thereto (*e.g.*, AEUxxxxxx).

[2] See Focused Feasibility Study Report, p. 1-28.

- The DEF also alleges discharges of substances that are *not* LPRSA COPCs or COPECs. Such alleged discharges did not result from operations at the Shulton site and are *de minimis* at most. They are summarized in a footnote.[3]

In addition, the DEF implies indirectly that stormwater runoff from the site could possibly have carried contamination from on-site soils to Weasel Brook. (p.12). Any inference that such soil contamination resulted in COPCs or COPECs being discharged to the Lower Passaic River is highly speculative at best. First, any amounts that could possibly have reached Weasel Brook through stormwater runoff would have been *de minimis*. The DEF duly notes that soil sampling of a "former fill" area in connection with the ECRA closure and of 4 former drum storage areas in connection with a 1991-1992 RCRA closure indicated the presence of a number of hazardous substances. What the DEF does *not* say is that all detected concentrations of any COPCs or COPECs were below, and in most cases well below, NJ's residential direct contact soil cleanup criteria, with the exception of one sample of lead (which was still well below the non-residential criterion). And the report of the soil sampling of the storage pads determined that "it can be reasonably concluded that the minor soil contamination found at storage pads . . . is not associated with the use of the pads as RCRA hazardous waste storage areas." (AEU000168). Moreover, because the detected contaminants tend to adsorb strongly to soils and sediments, any *de minimis* amounts that may have reached Weasel Brook would have been contained behind the downstream dam in Weasel Brook and never reached the Lower Passaic River.

In sum, we are aware of no credible evidence of any discharge from the former Shulton site into the Lower Passaic River of any of the LPRSA COPCs or COPECs identified by EPA, and quite clearly any contaminants that may have conceivably reached the river would have been *de minimis* at most.

III. Additional Factors

Wyeth has fully cooperated with EPA with respect to the LPRSA. It is a signatory to the initial 2004 and subsequent 2007 Administrative Orders on Consent to fund and perform the RI/FS for the LPRSA, and to the 2012 AOC to perform the RM10.9 removal action. In addition, it participated as a third-party defendant in the 2014 settlement of the Spill Act litigation brought by the NJDEP against Occidental Chemical, *et al.* Wyeth was not named in NJDEP's 2003 Directive identifying parties responsible for hazardous substances in the Lower Passaic River.

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[3] The DEF alleges one "potential" direct nexus, a spill of liquid diesel on November 15, 1990. (p.13). However, the Clifton Hazmat Team report of that spill, included in the DEF package, states clearly that it "investigated [the] leak and found it to be upstream of Weasel Brook in the area of General Foods . . . . Possibl[y] from street runoff." (AEU000062-64). That is, it did not originate from the Shulton Site.

The DEF also notes a reported spill on-site that impacted Weasel Brook: in 1982, between 25 and 50 gallons of fuel oil were spilled when a tank was being filled; however, although the spilled oil reached Weasel Brook, a floating dike was installed in the brook and sorbent pads controlled the discharge within one hour of the spill. Any quantity of fuel oil that might have reached the Passaic River from this spill is certainly *de minimis*. Indeed, even if the entire spill reached the Passaic River, it would still be *de minimis*.

The DEF notes as a "potential" nexus the presence of volatile organic compounds in groundwater at the Shulton facility. While the ECRA investigation found low levels of VOCs in the groundwater at the site, it concluded that "[i]t appears that the contamination is at least being contributed to by an off-site source; it is likely evidence of a regional groundwater contamination problem." And in a No Further Action Determination of December 15, 1999, NJDEP agreed, stating that groundwater contamination at the site "has been determined to be originating from one or more sources upgradient of the Site and requires no further investigation . . . at this time."